

Environmental Protection Agency

§ 260.41

combustion are boilers, even though they do not otherwise meet the definition of boiler contained in § 260.10, after considering the following criteria:

(a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and

(c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(d) The extent to which exported energy is utilized; and

(e) The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

(f) Other factors, as appropriate.

[50 FR 662, Jan. 4, 1985, as amended at 59 FR 48041, Sept. 19, 1994]

§ 260.33 Procedures for variances from classification as a solid waste or to be classified as a boiler.

The Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:

(a) The applicant must apply to the Administrator for the variance. The application must address the relevant criteria contained in § 260.31 or § 260.32.

(b) The Administrator will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Administrator will issue a final decision after receipt of comments and after the hearing (if any).

[59 FR 48041, Sept. 19, 1994]

§ 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

(a) The Regional Administrator may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in § 261.6(a)(2)(iv) of this chapter should be regulated under § 261.6 (b) and (c) of this chapter. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Regional Administrator will consider the following factors:

(1) The types of materials accumulated or stored and the amounts accumulated or stored;

(2) The method of accumulation or storage;

(3) The length of time the materials have been accumulated or stored before being reclaimed;

(4) Whether any contaminants are being released into the environment, or are likely to be so released; and

(5) Other relevant factors.

(b) [Reserved]

The procedures for this decision are set forth in § 260.41 of this chapter.

[50 FR 662, Jan. 4, 1985]

§ 260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.

The Regional Administrator will use the following procedures when determining whether to regulate hazardous waste recycling activities described in § 261.6(a)(2)(iv) under the provisions of § 261.6 (b) and (c), rather than under the provisions of subpart F of part 266 of this chapter.

(a) If a generator is accumulating the waste, the Regional Administrator will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of subparts A, C, D, and E of part 262 of this chapter. The notice will become final within 30 days,

unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Regional Administrator will hold a public hearing. The Regional Administrator will provide notice of the hearing to the public and allow public participation at the hearing. The Regional Administrator will issue a final order after the hearing stating whether or not compliance with part 262 is required. The order becomes effective 30 days after service of the decision unless the Regional Administrator specifies a later date or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal. Final Agency action occurs when a final order is issued and Agency review procedures are exhausted.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of parts 270 and 124 of this chapter. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Regional Administrator's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Agency's determination. The question of whether the Regional Administrator's decision was proper will remain open for consideration during the public comment period discussed under §124.11 of this chapter and in any subsequent hearing.

[50 FR 663, Jan. 4, 1985]

APPENDIX I TO PART 260—OVERVIEW OF SUBTITLE C REGULATIONS

The Agency believes that there are many people who suspect, but are not sure, that their activities are subject to control under the RCRA Subtitle C rules. This appendix is written for these people. It is designed to help those who are unfamiliar with the hazardous waste control program to determine

with which, if any, of the regulations they should comply.

Definition of Solid Waste

The first question which such a person should ask himself is: "Is the material I handle a solid waste?" If the answer to this question is "No", then the material is not subject to control under RCRA and, therefore, the person need not worry about whether he should comply with the Subtitle C rules.

Section 261.2 of this chapter provides a definition of "solid waste" which expands the statutory definition of that term given in section 1004(27) of RCRA. This definition is diagrammed in Figure 1 below.

Figure 1 explains that all materials are either: (1) Garbage refuse, or sludge; (2) solid, liquid, semi-solid or contained gaseous material; or (3) something else. No materials in the third category are solid waste. All materials in the first category are solid waste. Materials in the second category are solid waste unless they are one of the five exclusions specified in §261.4(a).

Definition of Hazardous Waste

If a person has determined that his material is a "solid waste", the next question he should ask is: "Is the solid waste I handle a hazardous waste?"

Hazardous waste is defined in §261.3 of this chapter. Section 261.3 provides that, in general, a solid waste is a hazardous waste if: (1) It is, or contains, a hazardous waste listed in subpart D of part 261 of this chapter, or (2) the waste exhibits any of the characteristics defined in subpart C of part 261. However, parts 260 and 261 also contain provisions which exclude (§§261.4(b), 260.20, and 260.22) certain solid wastes from the definition of "hazardous waste", even though they are listed in subpart D or exhibit one or more of the characteristics defined in subpart C. Figure 2 depicts the interplay of these special provisions with the definition of "hazardous waste". It presents a series of questions which a person should ask himself concerning his waste. After doing so, the person should be able to determine if the solid waste he handles is a hazardous waste.

Hazardous Waste Regulations

If this is the case, the person should look at Figure 3. Figure 3 depicts the special provisions specified in the final part 261 rules for hazardous waste which:

1. Is generated by a small quantity generator
2. Is or is intended to be legitimately and beneficially used, re-used, recycled, or reclaimed
3. Is a sludge; is listed in part 261, subpart D; or is a mixture containing a waste listed in part 261, subpart D.

For each of these Groups, Figure 3 indicates with which subtitle C regulations (if

any) the person handling these wastes must comply. Figure 3 also explains that, if a person handles hazardous waste which is not included in any one of the above three categories, his waste is subject to the subtitle C regulations diagrammed in Figure 4.

Figure 4 is a flowchart which identifies the three categories of activities regulated under the subtitle C rules, and the corresponding set of rules with which people in each of these categories must comply. It points out that all people who handle hazardous waste are either: (1) Generators of hazardous waste, (2) transporters of hazardous waste, (3) owners or operators of hazardous waste treatment, storage, or disposal facilities, or (4) a combination of the above. Figure 4 indicates that all of these people must notify EPA of their hazardous waste activities in accordance with the Section 3010 Notification Procedures (see 45 FR 12746 *et seq.*), and obtain an EPA identification number.

It should be noted that people handling wastes listed in subpart D of part 261 who have filed, or who intend to file an application to exempt their waste from regulation under the subtitle C rules, must also comply with the notification requirements of section 3010.

If a person generates hazardous waste, Figure 4 indicates that he must comply with the part 262 rules. If he transports it, he must comply with the part 263 rules. The standards in both these parts are designed to ensure, among other things, proper record-keeping and reporting, the use of a manifest system to track shipments of hazardous waste, the use of proper labels and containers, and the delivery of the waste to a permitted treatment, storage, or disposal facility.

If a person owns or operates a facility which treats, stores, or disposes of hazardous waste, the standards with which he must comply depend on a number of factors. First of all, if the owner or operator of a *storage* facility is also the person who generates the waste, and the waste is stored at the facility for less than 90 days for subsequent shipment

off-site, then the person must comply with § 262.34 of the part 262 rules.

All other owners or operators of treatment, storage, or disposal facilities must comply with either the part 264 or the part 265 rules. To determine with which of these sets of rules an owner or operator must comply, he must find out whether his facility qualifies for interim status. To qualify, the owner or operator must: (1) Have been treating, storing, or disposing of the hazardous waste, or commenced facility construction on or before October 21, 1976, (2) comply with the section 3010 notification requirements, and (3) apply for a permit under part 270 of this chapter.

If the owner or operator has done all of the above, he qualifies for interim status, and he must comply with the part 265 rules. These rules contain administrative requirements, monitoring and closure standards, and an abbreviated set of technical and closure and post-closure cost estimate requirements. The owner or operator must comply with these standards until final administrative disposition of his permit application is made. If a permit is issued to the owner or operator, he must then comply with the permit which will be based on the part 264 rules.

If the owner or operator has not carried out the above three requirements, he does not qualify for interim status. Until he is issued a permit for his facility, the owner or operator must stop waste management operations (if any) at the facility, and send his hazardous waste (if any) to a facility whose owner or operator has interim status or to a storage facility following the part 262 rules.

In order to apply for a permit, the owner or operator must comply with the procedures specified in part 270 of this chapter.

It should be noted that the Agency will be periodically revising the rules depicted in Figures 3 and 4. All persons are encouraged to write to EPA to verify that the regulations which they are reading are up-to-date. To obtain this verification, contact: Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 684-5362.

FIGURE 1
DEFINITION OF A SOLID WASTE

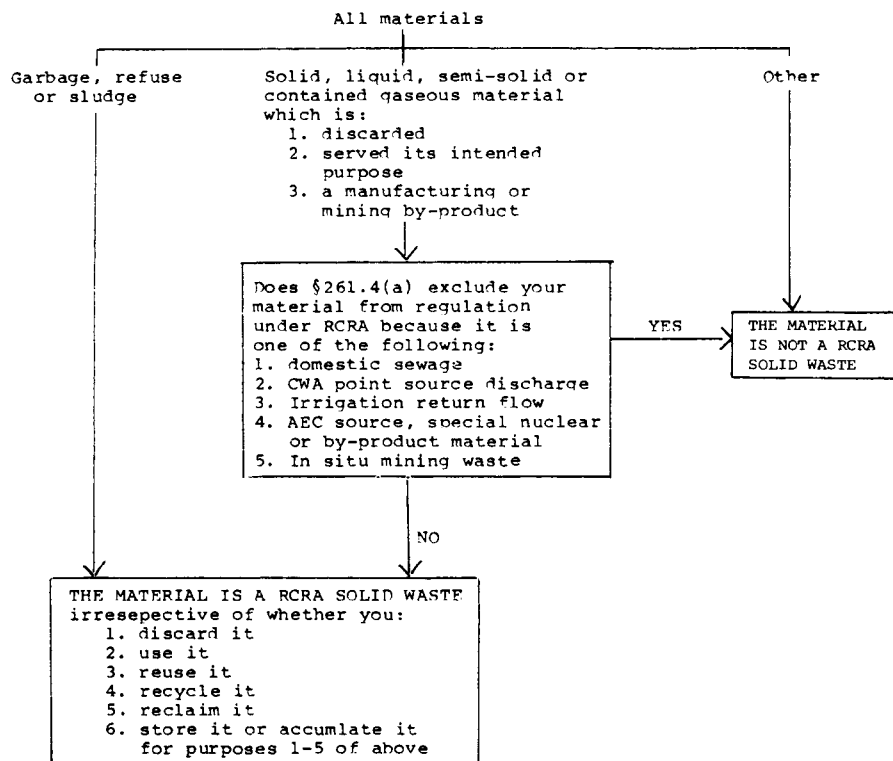


FIGURE 2
DEFINITION OF A HAZARDOUS WASTE

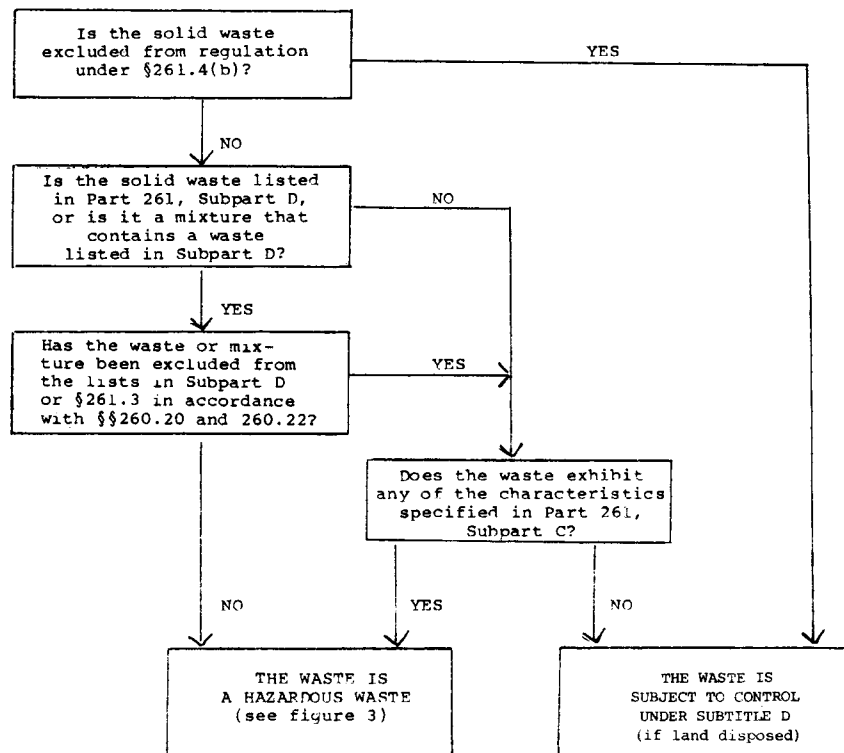


FIGURE 3
SPECIAL PROVISIONS FOR CERTAIN HAZARDOUS WASTE

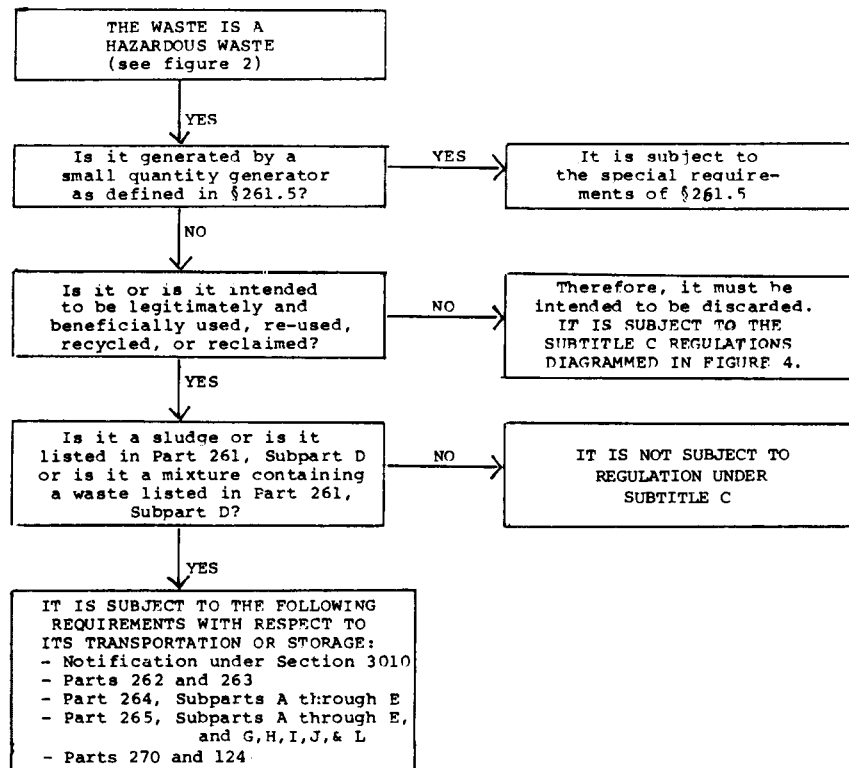
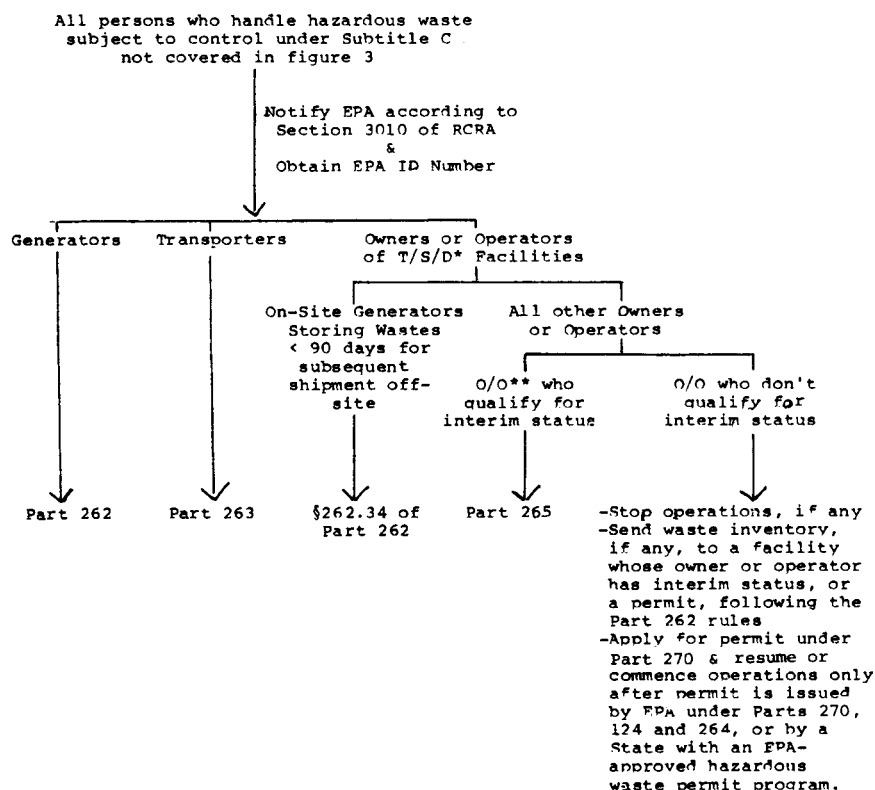


FIGURE 4
REGULATIONS FOR HAZARDOUS WASTE
NOT COVERED IN DIAGRAM 3



* T/S/D stands for Treatment, Storage, or Disposal

** O/O stands for Owners or Operators

[45 FR 33073, May 19, 1980, as amended at 48 FR 14293, Apr. 1, 1983]

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

Sec.

261.1 Purpose and scope.

261.2 Definition of solid waste.

261.3 Definition of hazardous waste.

261.4 Exclusions.

261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

261.6 Requirements for recyclable materials.

261.7 Residues of hazardous waste in empty containers.

261.8 PCB wastes regulated under Toxic Substance Control Act.

261.9 Requirements for Universal Waste.